



Winston H. Hickox
*Secretary for
Environmental
Protection*

State Water Resources Control Board

Executive Office

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Gray Davis
Governor

*The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption.
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March 12, 2002

Brigadier General Larry Davis
U.S. Army Corps of Engineers
South Pacific Division
333 Market Street
San Francisco, CA 94105

Dear General Davis:

CLEAN WATER ACT (CWA) SECTION 401 WATER QUALITY CERTIFICATION OF NATIONWIDE PERMITS (NWP)

On January 15, 2002, the U.S. Army Corps of Engineers (USCOE) published in the Federal Register (Volume 67, Number 10) the Final Notice to reissue 43 NWPs and 27 NWP General Conditions (GCs). All NWPs and GCs become effective on March 18, 2002, and they will expire on March 18, 2007.

In California, the State Water Resources Control Board (SWRCB) is responsible for issuing or denying CWA section 401 Water Quality Certification (WQC) for the NWPs. The USCOE's Federal Register Final Notice serves as the USCOE's application to the SWRCB for WQC. The State has 60 days in which to act.

In order to issue WQC, the SWRCB must find that there is reasonable assurance that the proposed discharge will comply with all applicable State and Federal laws, policies, and regulations governing the protection of the beneficial uses of the State's water resources. In the case of the NWPs, the State must make that finding for all discharges which might be authorized by the NWPs during their five-year effective period.

The State's issuance of WQC is a discretionary action subject to the California Environmental Quality Act (CEQA), which requires study and public review of projects which could impact the State's environment. In order to act on the NWPs in compliance with CEQA, the SWRCB must first prepare an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) for NWPs which could significantly impact the environment, or determine that the activities authorized by some NWPs are exempt from CEQA. Developing an EIR or MND and obtaining public review is impossible within the time in which the State must act on the NWPs.

Based on our CEQA responsibilities and the available information on the potential impacts of discharges authorized by the NWPs, I am taking the following actions:

California Environmental Protection Agency



- A. I hereby certify 17 NWP's subject to the Conditions and the "Notification" Requirements specified below. These 17 NWP's are presented in Table A below. The activities authorized by these 17 NWP's are exempted from CEQA review. Activities authorized under these 17 permits should not result in more than minimal individual or cumulative impacts.

TABLE A – Certified Nationwide Permits

No.	NATIONWIDE PERMIT	Decision
1	Aids to Navigation	Certify subject to Conditions
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Certify subject to Conditions
5	Scientific Measurement Devices	Certify subject to Conditions and Notification Requirements
6	Survey Activities	Certify subject to Conditions and Notification Requirements
9	Structures in Fleeting and Anchorage Areas	Certify subject to Conditions
10	Mooring Buoys	Certify subject to Conditions
11	Temporary Recreational Structures	Certify subject to Conditions and Notification Requirements
20	Oil Spill Cleanup	Certify subject to Conditions and Notification Requirements
22	Removal of Vessels	Certify subject to Conditions
24	State Administered Section 404 Programs	Certify
28	Modification of Existing Marinas	Certify subject to Conditions and Notification Requirements
29	Single-Family Housing	Certify subject to Conditions and Notification Requirements
30	Moist Soil Management for Wildlife	Certify subject to Conditions and Notification Requirements
32	Completed Enforcement Actions	Certify subject to Conditions and Notification Requirements
34	Cranberry Production Activities	Certify subject to Conditions and Notification Requirements
36	Boat Ramps	Certify subject to Conditions and Notification Requirements
38	Cleanup of Hazardous and Toxic Waste	Certify subject to Conditions and Notification Requirements

- B. I hereby deny without prejudice certification of the remaining 26 NWP's. These 26 NWP's are presented in Table B below. These 26 NWP's have wide breadth and scope, which makes

it extremely difficult to determine their potential direct, indirect, and cumulative impacts. Denial of certification of these 26 NWP's does not affect the SWRCB's ability to certify these NWP's at a future time. CWA section 401 certification of projects authorized by these 26 NWP's will be considered on an individual project-specific basis.

TABLE B – Nationwide Permits Denied Certification Without Prejudice

No.	NATIONWIDE PERMIT	No.	NATIONWIDE PERMIT
2	Structures in Artificial Canals	25	Structural Discharge
3	Maintenance	26	RESERVED (Not included in this certification)
7	Outfall Structures and Maintenance	27	Stream and Wetland Restoration Activities
8	Oil and Gas Structures	31	Maintenance of Existing Flood Control Facilities
12	Utility Line Activities	33	Temporary Construction, Access and Dewatering
13	Bank Stabilization	35	Maintenance Dredging of Existing Basins
14	Linear Transportation Projects	37	Emergency Watershed Protection and Rehabilitation
15	U.S. Coast Guard Approved Bridges	39	Residential, Commercial, and Institutional Developments
16	Return Water from Upland Contained Disposal Areas	40	Agricultural Activities
17	Hydropower Projects	41	Reshaping Existing Drainage Ditches
18	Minor Discharges	42	Recreational Facilities
19	Minor Dredging	43	Storm water Management Facilities
21	Surface Coal Mining Activities	44	Mining Activities
23	Approved Categorical Exclusions		

CONDITIONS:

1. **Porter-Cologne Water Quality Control Act:** All permitted activities shall comply with all requirements of California's *Porter-Cologne Water Quality Control Act*.
2. **Non-Severability:** If any condition is found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
3. **Water Diversion and Use:** Certification is denied for any activity involving a new or modified diversion or impoundment of water, unless the SWRCB has already approved a

water rights permit, or such diversion or impoundment is solely for the purpose of drainage or flood control.

4. **Other Federal Permits and Licenses:** Certification is denied for any activity requiring the issuance or renewal of more than one federal permit or license.
5. **Hydroelectric Facilities Requiring a Federal Energy Regulatory Commission (FERC) License:** This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license.
6. **Endangered Species Act:** Certification is denied for any project that would result in the taking of any candidate, threatened, or endangered species or the violation of the federal or California Endangered Species Acts.
7. **Subject to Review:** This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13320 of the California Water Code and Title 23 California Code of Regulations (23 CCR) section 3867 *et seq.*
8. **Payment of Fees:** Certification is conditioned upon total payment of any fee which is required, pursuant to 23 CCR Chapter 28 and is owed by the applicant.
9. **Enforcement:**

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under State law. For purposes of CWA section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this WQC.

 - a. In response to a suspected violation of any condition of this WQC, the SWRCB may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - b. In response to any violation of the conditions of this WQC, the SWRCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
10. **Notification:** For those NWP's indicated in Table A above as being subject to "Notification" Requirements, WQC is conditioned on submittal of a "Notification" as specified below.

NOTIFICATION:

Permittees proceeding under those NWP's indicated in Table A above as being subject to "Notification" Requirements, are required to provide "Notification" of the proposed activity to the SWRCB and the appropriate Regional Water Quality Control Board (RWQCB), as specified below.

Notification Requirements:

Not later than 30 days prior to commencing work on the proposed activity, the applicant must submit to the appropriate RWQCB(s) and the SWRCB a "Notification" containing at a minimum the information listed below. If a "Notification" is required as part of the USCOE's CWA section 404 permit, a copy of the "Notification" to the USCOE can be used instead. To avoid project delays, the applicant should submit the "Notification" as early as possible. If the applicant is not contacted by the RWQCB within 30 days of the postmarked date of the "Notification", the applicant may assume that the project meets the conditions of certification and may proceed with the project.

Contents of Notification:

1. The name, address, and telephone number of:
 - a. The applicant and
 - b. The applicant's agent (if an agent is submitting the notification).
2. Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including:
 - a. Federal agency.
 - b. Type (e.g., NWP Number).
 - c. File number(s) assigned by the federal agency(ies), if available.
3. A complete project description including:
 - a. The purpose and final goal of the entire activity.
 - b. Address (including city and county), assessor's parcel number, and, if available, the longitude and latitude of the project site.
 - c. Name(s) of any receiving water body(ies) that may receive a discharge.
 - d. Type(s) of receiving water body(ies) (e.g., at a minimum: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland type).
 - e. For each water body type reported under subsection (3)(c) of this section, the total estimated quantity of waters and the types of discharge material(s) that may temporarily or permanently impact the waters of the State. Fill discharges shall be reported in acres. Fill discharges for channels, shorelines, riparian corridors, and other linear habitat shall also be reported in linear feet. Dredge discharges shall be reported in cubic yards.
 - f. A check in the amount specified in 23 CCR section 3833(b)(3), made out to each RWQCB to which the "Notification" is submitted.

The "Notification" must be signed by the applicant or the applicant's agent (if an agent is submitting the "Notification"). The "Notification" must include a statement that the submitted information is complete and accurate.

APPEAL RIGHTS

If the USCOE disagrees with the State's CWA section 401 issuance of WQC for the 17 NWP's or the State's WQC denials without prejudice for the remaining 26 NWP's, as specified above, the USCOE has the right to seek relief via petition for review by the SWRCB, in accordance with 23 CCR section 3867 *et seq.*

If you have any questions, this activity is under the direction of Mr. Stan Martinson, Chief of the Division of Water Quality, who may be reached at 916- 341-5458 . The staff person most knowledgeable on this issue is Mr. Ruben A. Guieb, Environmental Scientist, who may be reached at 916-341-5464 (email guier@dwq.swrcb.ca.gov). You may also call Mr. Oscar Balaguer, Chief of the WQC Unit, at 916-341-5485 (email balao@dwq.swrcb.ca.gov).

Sincerely,

(SIGNED)
Celeste Cantú
Executive Director

cc: Ms. Beth Jines
Special Assistant to the Secretary
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